IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2909 of 2004
with
CIVIL APPLICATION NO. 9678 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EMPLOYEES STATE INSURANCE CORP - Appellant(s)
Versus
RANZITSINH R ZALA - Defendant(s)

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Appearance :
MR SHASHIKANT S GADE for the Appellant.
MR MS TRIVEDI, for the respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 15/11/2005

ORAL JUDGMENT

1. Heard learned Advocates for parties. In view of the fact that the question involved is very narrow and the respondent is awaiting result of his claim of compensation for a long time, the matter is taken up for final hearing

by consent of parties.

2. While admitting this appeal, this Court had formulated following question as a substantial question of law arising for determination by this Court :-

> *"Whether it is legally permissible for E.I. Court to assess the disability directly without assessment of disability by either Medical Board or Medical Appellate Tribunal?*

3. There is no dispute between the parties that the respondent was not examined either by the Medical Board or by the Medical Appellate Tribunal. The award is passed by the learned Judge of the E.I. Court on the basis of a medical certificate issued by Orthopaedic Surgeon of Civil Hospital, Limdi, assessing disbility at 15%. The E.I. Court, in paragraph 14, observed that the certificate is issued by Orthopaedic Surgeon Civil Hospital, Limdi, and it would not be proper, reasonable or legal to refer present respondent to the Medical Board for assessment of his disability as there already has been a long delay.

4. These observations by the E.I. Court get no support from either any judicial pronouncement or the Employees State Insurance Act ("Act" for short). The scheme of the Act contemplates assessment of disability by Medical Board or Medical Appellate Tribunal. If the disability is not assessed

by these authorities, it is the duty of the E.I. Court to refer such claimant to the Medical Board for assessment of disability. If this is the scheme of the Act, the learned Judge of the E.I. Court was not justified in observing that it would not be proper, reasonable or legal to refer the claimant to the Medical Board. No doubt, delay has occurred. But, out of enthusiasm the requirements of the Rules or the Act cannot be ignored or given a go by. Courts of law have to act and render decision as per law in facts of the case. Under the circumstances, the impugned judgment and order rendered on the basis of disability certificate issued by Orthopaedic Surgeon of Civil Hospital and in absence of any assessment of disability by the Medical Board cannot be upheld. It was not permissible for the E.I. Court to assess the disability by relying on Medical Certificate of Orthopaedic Surgeon of Civil Hospital, which does not seem to have been duly proved. The question formulated at the time of admission is answered accordingly.

5. The appeal, therefore, deserves to be allowed and the same is allowed. The impugned judgment and order is set aside. The matter is remanded to the E.I. Court with a direction that the respondent shall be referred to the Medical Board for assessment of disability and, on receiving certificate from the Medical Board, the case of the respondent shall be disposed of in accordance with law, on its own merits.

6. In view of the above order passed in the appeal, the Civil

Application does not survive. It shall stand disposed of accordingly. Rule is discharged with no order as to costs. Ad-interim relief is vacated.

[A. L. DAVE, J.]

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